

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JOE H. BANDY, III,

Civil No. 06-2109 (JRT/SRN)

Plaintiff,

v.

**ORDER AMENDING ORDER
GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS ON APPEAL**

DAVID CRIST, et al.,

Defendants.

Joe H. Bandy, III, #125257, Minnesota Correctional Facility, 1000 Lakeshore Drive, Moose Lake, MN 55767, plaintiff *pro se*.

Kelly S. Kemp, Assistant Attorney General, **OFFICE OF THE MINNESOTA ATTORNEY GENERAL**, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101, for defendants David Crist, Joan Fabian, Mr. Hokonson, Ken Thole, Jerome G. Sauer, John Wing, Sean Swanson, and Matthew VanderVegt.

In an Order dated May 1, 2008, this Court granted plaintiff Joe H. Bandy, III's motion to proceed in forma pauperis ("IFP") on appeal. The Eighth Circuit has now remanded this case with instructions for this Court to calculate and collect plaintiff's appellate filing fees in accordance with *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997). This Court now amends its prior order in light of those instructions.

IFP status on appeal does not relieve prisoners of the obligation to pay the \$455 appellate filing fee, which is assessed upon the receipt of the prisoner's notice of appeal. *Henderson*, 129 F.3d at 483-85; *see* 28 U.S.C. § 1915(b). However, an order granting IFP status permits the prisoner to pay the filing fee in installments, pursuant to a schedule

set by 28 U.S.C. § 1915(b). *See Henderson*, 129 F.3d at 483-84. If the prisoner has sufficient means, he is required to make an initial partial payment toward the filing fee. *See id.*; 28 U.S.C. § 1915(b)(1). Whether or not he has made this initial payment, however, he is required to pay the remaining balance through periodic deductions from his prison trust account. *See Henderson*, 129 F.3d at 483-84; 28 U.S.C. § 1915(b)(2).

A prisoner's initial filing fee is "20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." 28 U.S.C. § 1915(b)(1). Because plaintiff recently transferred facilities, the information for his prison trust account covers just a portion of February, the full month of March, and a portion of April. Plaintiff's average deposits for those months totaled \$142.66, and the average balance in plaintiff's account for the end of each month was \$311.51. Plaintiff's required initial filing fee is thus \$62.30. Pursuant to *Henderson*, this Court instructs the facility where defendant is in custody to pay this amount from defendant's account to the clerk of the district court. 129 F.3d at 485. This initial filing fee must be paid before plaintiff's appeal will be allowed to proceed.

Though plaintiff's appeal may proceed once his initial filing fee has been paid, the facility where plaintiff is in custody shall "calculate and pay the remaining installments to the clerk of the district court until the whole of the appellate filing fees has been paid in full as provided by § 1915(b)(2)[.]" *Henderson*, 129 F.3d at 485.

Accordingly, based on the foregoing records, files, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. This Court's Order granting plaintiff's Motion for Leave to Appeal in forma pauperis [Docket No. 58] is **AMENDED** to add the following:

a. Plaintiff's Motion for Leave to Appeal in forma pauperis [Docket No. 55] is **GRANTED**, subject to the payment of an initial partial filing fee of not less than \$62.30. The facility where plaintiff is incarcerated shall pay \$62.30 from plaintiff's prison trust account to the clerk of the district court.

b. The facility where plaintiff is incarcerated shall calculate and pay the remaining installments to the clerk of the district court until the whole of the appellate filing fees has been paid in full as provided by § 1915(b)(2).

DATED: June 13, 2008
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge